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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,682	12/15/2003	Erich George Schultz	ES-1-gw-mv	3557
7590	08/25/2004		EXAMINER COHEN, AMY R	
			ART UNIT 2859	PAPER NUMBER

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/735,682

Applicant(s)

SCHULTZ, ERICH GEORGE

Examiner

Amy R Cohen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12/15/2003.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 12-17 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 12-17 are directed to the intended use of the template and therefore, do not structurally limit the template.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-3, 17, 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Rice (U.S. Patent No. 6,618,955).

Rice teaches a template (32, 34) for hanging picture frames level on a wall, comprising: a rectangular sheet of pliable material (32, 34), wherein said sheet is planar, said sheet having a pair of opposite side edges, a top edge and a bottom edge, and front and rear surfaces (Col 2, lines 42-64); at least one picture frame indicia being disposed on said front of said sheet (Fig. 5, the picture frame indicia is on the templates 32 and 34 once the frames are traced onto the templates), said frame indicia being defined by a substantially horizontal top edge and bottom

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edge and a substantially vertical pair of side edges, wherein a fastener placement marker (54, 56) is disposed within said frame indicia in association with each of said top, bottom and side edges being so disposed as to indicate correct fastener placement for attachment of the picture frame to the wall, wherein the picture frame being complementarily sized as said picture frame indicia can be hung level on the wall with said fastener (Fig. 5); and, means for leveling (72) said picture frame indicia being displayed on said sheet whereby a picture frame being complementarily sized as the picture frame indicia can be hung level on the wall.

Rice teaches the template comprising a plurality of picture frame indicia being disposed on said sheet, wherein said picture frame indicia have a plurality of various sizes to permit common sized picture frames to be hung (Figs. 5, 7, 8, the grid lines 66 and 68 are provided so that a plurality of shapes can be drawn on templates 32 and 34).

Rice teaches the template comprising a removable adhesive (46) being disposed on said rear surface of said sheet for attaching said sheet to the wall (Fig. 5).

Rice teaches wherein said template provides a totally new solution for hanging and arranging frames and shelves that requires no measuring (Fig. 5).

Rice teaches the template, wherein said template is a pliable universal template (32, 34) with cutting features (66, 68) providing means for seamlessly covering any size and shaped surface both vertically and horizontally (Fig. 5).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rice in view of Schwandt (U. S. Patent No. 5,063,679).

Rice discloses a template (32, 34) for hanging picture frames level on a wall, comprising: a rectangular sheet of pliable material (32, 34), wherein said sheet is planar, said sheet having a pair of opposite side edges, a top edge and a bottom edge and front and rear surfaces (Fig. 5); at least one picture frame indicia (Fig. 5, the picture frame indicia is on the templates 32 and 34 once the frames are traced onto the templates) being disposed on said front of said sheet, said frame indicia being defined by a substantially horizontal top edge and bottom edge and a substantially vertical pair of side edges, wherein a fastener placement marker (54, 56) is disposed within said frame indicia in association with each of said top, bottom and side edges being so disposed as to indicate correct fastener placement for attachment of the picture frame to the wall, wherein the picture frame being complementarily sized as said picture frame indicia can be hung level on the wall with said fastener; a plurality of bubble level placement indicia (66a, 68a) being disposed on said sheet, wherein said bubble level placement indicia are disposed on said corners of said sheet (Figs. 7 and 8) wherein said bubble level placement indicia are so disposed as to allow said sheet and said picture frame indicia to be horizontally and vertically aligned with the wall (Col 6, lines 10-25); a bubble leveler (72) being disposed on said bubble level placement indicia; and, a removable adhesive (46) being disposed on said rear surface of said sheet for attaching said sheet to the wall (Fig. 5).

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Rice discloses the template comprising axial correlation guides (66, 68) being disposed adjacent said fastener placement markers to permit the horizontal and vertical axes of the sheet to be identified (Col 6, lines 1-9).

Rice discloses the template comprising axial correlation guides (66, 68) being disposed adjacent said bubble level placement indicia to permit the horizontal and vertical axes of the sheet to be identified (Col 6, lines 1-9).

Rice discloses the template comprising means for an eye level guide (70) being disposed on said sheet whereby the user can determine the correct picture height at which to place the picture (Col 6, lines 1-9).

Rice discloses the template wherein said means for an eye level guide comprises at least one centrally disposed eye level guide (Figs. 7 and 8).

Rice discloses the template wherein said means for an eye level guide comprises at least one horizontal eye level guide (Fig. 8, horizontal numbers 70).

Rice discloses the template comprising a plurality of peripheral guides disposed in a spaced apart relationship around the perimeter of said sheet wherein a plurality of said sheets can be joined together wherein said plurality of said sheets can be horizontally and vertically aligned with the wall (Col 4, lines 27-65).

Rice discloses the template a plurality of cutting guide lines being disposed on said front of said sheet, wherein said sheet is cut into parts diagonally (Col 1, lines 32-60), wherein a plurality of said sheets can be joined together (Col 4, lines 27-65), wherein said parts can be horizontally and vertically aligned with a staircase.

Rice does not disclose a template wherein a bubble leveler is attached to said sheet by removable adhesive.

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Schwandt discloses a bubble level (10) comprising adhesive (63) for attaching to a work surface.

It would have been obvious at the time the invention was made to modify the bubble level of Rice to include an adhesive backing, as taught by Schwandt, so that a user could level the template on a wall without relying on another user.

Regarding the use of the template with a staircase, on a convex or concave wall, corner of a wall, hanging a shadow box, hanging a plasma television, hanging a self, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents disclose mounting templates Stephens (U. S. Patent No. 6,775,915), Klass et al. (U. S. Patent No. 6,553,683), Splain et al. (U. S. Patent No. 6,473,984), Voorhees (U. S. Patent No. 6,449,863), Jackson (U. S. Patent No. 5,195,249), Nirmel (U. S. Patent No. 5,076,612), Wilson (U. S. Patent No. 4,580,352), Landt (U. S. Patent No. 4,457,485), Newton (U. S. Patent No. 4,443,949), Swartz (U. S. Patent No. 3,057,073), and Herck (U. S. Patent No. 2,595,142).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy R Cohen whose telephone number is (571) 272-2238. The examiner can normally be reached on 8 am - 5 pm, M-F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ARC  
August 20, 2004



Diego Gutierrez  
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